[J-44-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

DARLA FRITZ AND GORDON FRITZ,	:	No. 116 MAP 2005
	:	
Appellants	:	Appeal from the Order of the Superior
	:	Court entered on April 11, 2005, at No.
	:	2663 EDA 2003, vacating the Order
v.	:	entered August 5, 2003, by the Court of
	:	Common Pleas of Chester County, Civil
	:	Division, at No. 00-09454 and remanding
HAZEL WRIGHT, CAROLYN TEMPLE,	:	the case.
BONNIE STUART, AND SAMUEL	:	
WRIGHT, INDIVIDUALLY AND DOING	:	872 A.2d 851 (Pa. Super. 2005)
BUSINESS AS WRIGHT'S LANE	:	
PROPERTIES,	:	
	:	
Appellees	:	ARGUED: April 5, 2006

OPINION

MR. JUSTICE BAER **DECIDED: October 18, 2006**

Appellant Gordon Fritz[1] appeals from an order of the Superior Court reversing the order of the Court of Common Pleas of Chester County denying a motion for a mistrial filed by Hazel Wright, Carolyn Temple, Bonnie Stuart, and Samuel Wright (Appellees). The issue before this Court is whether 42 Pa.C.S. § 5104(b) and Article I, Section 6, of the Pennsylvania Constitution require that the same ten jurors vote identically on each question listed on a special interrogatory verdict sheet to sustain a proper "verdict" in the case. For

[1] As this appeal pertains only to the liability for Mr. Fritz's injuries, hereinafter "Appellant" refers to Mr. Fritz. The jury awarded Appellant Darla Fritz no damages on her loss of consortium claim.

the reasons that follow, we hold that any ten jurors who agree on a given interrogatory furnish a sufficient majority as to that question, and a verdict that requires a series of responses to interrogatories should be sustained even where a different grouping of ten jurors comprise the required majority for each individual question posed in a set of special interrogatories. Accordingly, we reverse the Superior Court's contrary ruling.

This matter arises out of personal injuries sustained on November 17, 1998 when Appellant lost his balance and fell on Appellees' driveway. Appellant was diagnosed with a shoulder injury, was treated medically, and allegedly missed over a year of work.

Appellant initiated this action by Writ of Summons and subsequent complaint filed on November 29, 2000, averring negligence by Appellees with respect to the design and maintenance of the driveway. Beginning on February 3, 2003, a three-day trial commenced before a twelve-member jury, during which the jury heard testimony that, among other damage claims, Appellant lost $45,000 in wages and suffered $6,300 in medical expenses as a result of his shoulder injury. After trial, the court submitted to the jury a verdict slip containing seven interrogatories.[2] The twelve-person jury rendered its

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[2] Specifically, the questions were:

1. Do you find [Appellees] were negligent?
2. Was [Appellees'] negligence a substantial factor in causing Appellant harm?
3. Was [Appellant] contributorily negligent?
4. Was [Appellant's] contributory negligence a substantial factor in bringing about his harm?
5. Taking the combined negligence that was a substantial factor in bringing about [Appellant's] harm as 100 percent, what percentage of that causal negligence was attributable to [Appellees] and what percentage was attributable to [Appellant]?
6. State the amount of damages, if any, sustained by [Appellant] as a result of the accident, without regard to and without reduction by the percentage of causal negligence, if any, that you have attributed to

(continued…)

initial verdict in favor of Appellant for $51,300. Appellees' counsel requested that the jury polled. After polling the jury twice, the trial court concluded that the jury had not reached a proper verdict because ten out of the twelve jurors did not agree on the amount of damages sustained by Appellant.[3] Specifically, only nine out of the twelve jurors believed that Appellant should receive an award of $51,300. The trial court, therefore, instructed the jury to resume its deliberations.

Following further deliberations, the jury again returned to the courtroom and rendered its final verdict in favor of Appellant for $51,300. The trial court again polled the jury. The polled jury was unanimous that Appellees were negligent (question one); that Appellees' negligence was a substantial factor in causing Appellant's harm (question two); and that Appellant was contributorily negligent (question three). On the issue of whether Appellant's contributory negligence was a substantial factor in bringing about his harm (question four), ten jurors agreed that it was not, while jurors four and eight stated that Appellant's contributory negligence was a substantial factor in bringing about his harm. On the question regarding the amount of damages (question six), while ten jurors believed that Appellant sustained $51,300 in damages, jurors four and nine stated that Appellant should

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(…continued)

him. The Court will perform the mathematical reduction based on the figures the jury supplies in this Verdict Slip.

7. State the amount of damages, if any, sustained by [ ] Darla Fritz.

Appellant's brief, at 6-8.

[3] As will be discussed further herein, in 1971, the Pennsylvania Constitution was amended to permit the General Assembly to replace the traditional requirement of unanimous jury verdicts with a five-sixths rule in civil cases. PA. CONST., ART 1, § 6 (1971). The legislature did so, providing that "a verdict rendered by at least five-sixths of the jury shall be the verdict of the jury and shall have the same effect as a unanimous verdict of the jury." 42 Pa.C.S. § 5104(b).

only receive an award of $6,300.[4] Thus, while ten jurors agreed on each individual interrogatory, the identities of the dissenters as to questions four and six were not consistent, and therefore, the same ten jurors did not agree as to all of the questions material to the verdict and award.

Appellees' counsel moved for a mistrial, arguing that the jury was confused and had not reached a proper verdict because the same ten jurors did not agree on each question. The trial court denied Appellees' motion and concluded that the jury had reached a valid verdict because at least ten out of twelve jurors agreed on every question on the verdict slip. The trial court opined that "[i]t is not unreasonable to infer that, rather than being confused, jurors no. 8 and 9 simply reached different conclusions about how to most fairly compensate [Appellant] in light of the evidence of damages, just as they differed regarding the evidence of [Appellant's] contributory negligence." Tr. Ct. Op. at 10. Thus, the trial court denied Appellees' motion for a mistrial.

Appellees appealed to the Superior Court, arguing that the verdict was improperly rendered because only nine jurors agreed with it in its entirety. A divided panel of the Superior Court agreed with Appellees, vacated the judgment, and remanded for a new trial. The panel majority examined the language of the Pennsylvania Constitution, which provides, in relevant part:

> Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.

PA. CONST. ART. 1, § 6. In accordance with this provision, the General Assembly enacted 42 Pa.C.S. § 5104(b), which provides that "[i]n any civil case a verdict rendered by at least

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[4] Although not pertinent to this appeal, the jury was unanimous that Mrs. Fritz was not entitled to any damages on her loss of consortium claim and thus question seven is not in controversy.

five-sixths of the jury shall be the verdict of the jury and shall have the same effect as a unanimous verdict of the jury." The Superior Court framed the issue as whether the term "verdict" as used in the Pennsylvania Constitution and Section 5104(b) "consists of all of the answers to the interrogatories or whether each individual interrogatory is a separable 'verdict.'" Fritz v. Wright, 872 A.2d 851, 852 (Pa. Super. 2005). Addressing this question, the majority determined that verdict meant the former, reasoning that in the interest of justice it could not parse the verdict sheet and count the votes on individual questions as if each were a separate verdict. Rather, it held that the verdict upon which five-sixths of the jurors must agree is comprised of the total verdict inclusive of each interrogatory response. In this case, the Superior Court found that the total verdict was agreed to by only nine jurors, and thus was not a proper verdict, as nine was less than five-sixths of the total jury. The Superior Court majority noted that its holding would not prevent jurors with dissenting views from fully participating in the deliberation process. Instead, the majority opined that the dissenting jurors could continue to express their disagreements throughout the deliberation process, and seek to persuade others to their views.

Judge Olszewski filed a dissenting opinion, in which he opined that the "same-juror rule" established by the majority unconstitutionally burdens a litigant's right to a jury of twelve persons. He argued that there was a proper verdict in this case because at least ten jurors agreed Appellees were negligent; at least ten jurors agreed that Appellant's contributory negligence was not a substantial factor in bringing about his harm; and at least ten jurors agreed that Appellant was entitled to $51,300 in damages. In support of his position, Judge Olszewski relied on Blum v. Merrell Dow Pharm. Inc., 626 A.2d 537, 538 (Pa. 1993), in which we articulated the constitutional right "entitling a party who properly demands a twelve person jury to a verdict from a jury of twelve persons," and explicitly recognized that it is of constitutional importance for each one of those twelve jurors to be able to engage fully in deliberations. Id. at 546-47. He explained that the same-juror rule in

effect obviated the role of dissenting jurors by effectively nullifying any of their votes that occurred subsequent to their first minority vote. Under such circumstances, he argued the parties would receive jury deliberations by fewer than twelve jurors in violation of the Pennsylvania Constitution as interpreted in Blum.

We granted allowance of appeal to determine whether Section 5104(b) and Article I, Section 6, of the Pennsylvania Constitution requires that the same ten jurors vote the same on each question listed on a special interrogatory verdict sheet for there to be a "verdict." As this is a question of law, our scope of review is plenary and our standard of review is *de novo*. See Touloumes v. E.S.C. Inc., 899 A.2d 343, 346 (Pa. 2006).

Appellant argues that neither the Pennsylvania Constitution Article I, Section 6, nor 42 Pa.C.S. § 5104(b) requires that the same ten jurors must agree on the answers to all interrogatories on a verdict slip, and that the Superior Court's same-juror rule unconstitutionally infringes on Appellant's right to a full and complete deliberation and decision from a jury of twelve. See Smith v. Times Publ'g Co., 36 A. 296, 297 (Pa. 1897). Appellant argues that the Superior Court created an unduly burdensome rule that allows the parties to dissect the jury's decision-making process and invade the sanctity of the jury, thus undermining the jury process.

Appellant further argues that the Superior Court majority opinion would complicate the jury deliberation process, thus undermining legislative intent in providing for less than unanimous verdicts, which Appellant posits was to simplify the jury deliberation process and reduce judicial inefficiency. Rather, Appellant advocates for the position espoused by Judge Olszewski, commonly referred to as the "any-majority rule," under which each matter submitted to the jury must be decided by a five-sixths majority, but the same five-sixths majority need not carry over from question to question.

Appellant points to decisions from New York and New Jersey, which have interpreted their respective five-sixths jury statutes to hold that a different five-sixths of the

jurors could answer each of the interrogatories, as long as every determination was supported by at least five-sixths of the jury. See Mahoney v. Podolnick, 773 A.2d 1102 (N.J. 2001) (holding that under the "any-majority rule," jurors vote on every issue irrespective of their votes on other issues, juror's votes on different issues do not have to be logically consistent, and a plaintiff prevails if five-sixths of jurors finds in his favor on each element of the cause of action); Schabe v. Hampton Bays Union Free Sch. Dist., 103 A.D.2d 418 (N.Y. App. Div. 1984) (holding that the validity of a verdict does not depend upon consistency of individual juror voting patterns, and it is not required that all interrogatory answers approved by five-sixth vote must have the concurrence of the same jurors). As Judge Olszewski did, Appellant also relies on our decision in Blum, 626 A.2d at 538, and argues that the Superior Court majority erodes the constitutional entitlement to full consideration by a jury of twelve.

On the other hand, Appellees argue in support of the same-juror rule. In the context of this case, they argue that the verdict announced by the jury was not really a verdict at all, because only nine of twelve jurors agreed with all components of the verdict announced by the foreperson. Largely echoing the Superior Court majority, Appellees argue that special interrogatories are not verdicts themselves, but rather are simply answers necessary to a verdict. See Harsh v. Petroll, 840 A.2d 404, 438 n.32 (Pa. Cmwlth. 2003), aff'd Harsh v. Petroll, 887 A.2d 209 (Pa. 2005).

Appellees also challenge Appellant's reliance on cases from New York and New Jersey. Appellees note that the number of states endorsing the any-majority rule is roughly the same as the number of states rejecting the rule, although they only identify one case that rejects the any-majority rule. See O'Connell v. Chesapeake & Ohio R.Co., 569 N.E.2d 889, 898 (Ohio 1991) (holding that in a case tried under comparative negligence principles, three-fourths of the jury must agree as to both negligence and proximate cause, and only those jurors who so find may participate in the apportionment of comparative negligence).

Appellees urge us to reject the argument that the Superior Court's holding invades the province of the jury and is an unconstitutional burden on the litigant's right to have the case decided by a jury of twelve because, they argue, nothing in the Superior Court decision suggests that less than twelve jurors may consider the issues. Appellees also rely on Blum, arguing that because litigants have a right to a trial by jury of twelve, they have the corresponding right to a verdict agreed to by at least ten of those twelve.

The parties' arguments and the positions of the Superior Court majority and dissent articulate two possible approaches to non-unanimous verdicts.[5] First, the position adopted by the Superior Court majority and advocated by Appellees is the same-juror rule, also known as the "same-jurors rule" or "identical jurors rule," which requires that the same jurors agree on all of the questions comprising the verdict slip. States adopting the same-juror rule express concern that to do otherwise would actually permit a party to prevail by persuading fewer than the requisite number of jurors of the entirety of the case. See, *e.g.*, State ex rel. Boyer v. Perigo, 979 S.W.2d 953, 957 (Mo. Ct. App. 1998) (reasoning that in a state requiring a three-fourths' majority of a twelve member jury, "[i]f any nine jurors could agree on liability and any nine jurors could agree on damages, a plaintiff could ultimately prevail by convincing only six persons unanimously of her position with regard to both liability and damages"). The same-juror rule rests on the premise that only a single "verdict" is returned in any given case, even where the verdict is made up of several steps that build upon one another. Patricia E. Weeks, *Have They Decided or Have They Not Decided?*, 50 LA.B.J. 430, 431 (2003). Under this view, a verdict is "a non-fragmentable totality . . . . a whole and separate entity . . . represent[ing] one ultimate finding on the basis of several issues." Hendrix v. Docusort, Inc., 860 P.2d 62, 65 (Kan. Ct. App. 1993), and,

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[5] For a collection of those cases supporting the any-majority rule and those supporting the same-juror rule, see Gourley v. Neb. Methodist Health Sys., 663 N.W.2d 43 (Neb. 2003), a case in which the Nebraska Supreme Court adopted the any-majority rule.

consequently, a juror not concurring with the five-sixths majority on a prefatory issue could not participate as a voting member on issues discussed thereafter.

In contrast, in states subscribing to the any-majority rule, any ten jurors agreeing on each of a series of questions is sufficient to support a verdict (or nine jurors, depending on the minimum required for non-unanimous verdicts). See, *e.g.*, Mahoney, 773 A.2d 1102; Schabe, 103 A.D.2d 418; Juarez v. Superior Court, 647 P.2d 128 (Cal. 1982). These states support adoption of the any-majority rule by observing that it is consistent with the policy that led to the abandonment of the unanimity rule. See Weeks, *supra*, at 431; Schabe, 103 A.D.2d at 423 ("Nonunanimous verdicts decrease the number of mistrials and retrials and thus reduce court congestion, delay and the cost of maintaining the judicial system. They also reduce the number of unjust verdicts deriving from juror obstinacy or dishonesty and discourage compromise verdicts.").

The question before us is whether to adopt the same-juror rule or the any-majority rule. To answer this question we must interpret the Pennsylvania Constitution, Art. 1, Section 6, and 42 Pa.C.S. § 5104(b). A provision of the constitution will be interpreted not in a strained or technical manner but as understood by the people who adopted it. Firing v. Kephart, 353 A.2d 833, 835 (Pa. 1976). Similarly, the object of statutory construction is to ascertain and effectuate legislative intent. 1 Pa.C.S. § 1921(a); see also Commonwealth v. Conklin, 897 A.2d 1168, 1175 (Pa. 2006). In pursuing that end, we are mindful that the statute's plain language generally provides the best indication of legislative intent. See Conklin, 897 A.2d at 1175; Commonwealth v. Gilmour Mfg. Co., 822 A.2d 676, 679 (Pa. 2003). "When the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b).

In reading the plain language, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage," while any words or phrases that have acquired a "peculiar and appropriate meaning" must be construed

according to that meaning. 1 Pa.C.S. § 1903(a); Shiffler, 879 A.2d at 189. Consistent with the Statutory Construction Act, this Court has repeatedly recognized that rules of construction, such as consideration of a statute's perceived "object" or "purpose," are to be resorted to only when there is an ambiguity in the meaning of the words. Sternlicht v. Sternlicht, 876 A.2d 904, 909 (Pa. 2005); Ramich v. WCAB (Schatz Elec., Inc.), 770 A.2d 318, 322 (Pa. 2001).[6]

With these principles in mind, we turn to the language of the constitutional and statutory provision at hand. Before 1971, Pennsylvania law required that verdicts be unanimous. The constitution was amended in 1971 to permit the legislature to "provide . . . by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case." PA. CONST. ART. 1, § 6. By passing this constitutional amendment, the public manifested its intent to require less than unanimity in civil cases and reaffirmed the constitutional right to a jury of twelve persons. See Blum, 626 A.2d at 546.

In accordance with this constitutional change, the legislature passed into law the current version of Section 5104(b), which provides that a verdict rendered by "at least five-sixths of the jury shall be the verdict of the jury." 42 Pa.C.S. § 5104(b). Preliminarily,

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[6] Pursuant to Section 1921(c), when the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

(1) The occasion and necessity for the statute.
(2) The circumstances under which it was enacted.
(3) The mischief to be remedied.
(4) The object to be attained.
(5) The former law, if any, including other statutes upon the same or similar subjects.
(6) The consequences of a particular interpretation.
(7) The contemporaneous legislative history.
(8) Legislative and administrative interpretations of such statute.

1 Pa.C.S. § 1921(c).

nothing in Article 1, Section 6, or Section 5104(b) defines "verdict" or requires that where special interrogatories are employed to guide a jury, the same ten jurors agree on each answer for there to be a verdict agreed upon by five-sixths of the jury. We must therefore attempt to ascertain the meaning of "verdict" as used in the constitutional and statutory provisions, construing the word in accordance to the rules of grammar and its common and approved usage. See 1 Pa.C.S. § 1903(a).

The Superior Court found that the "verdict" upon which five-sixths of the jurors must agree is comprised of the result of all interrogatory answers:

> [T]he "verdict," which answered "No" to the interrogatory asking whether contributory negligence was a factor and which awarded $51,300 in damages to [Appellant], was not the verdict of Jurors 4, 8, or 9[; as such, it was a] verdict of only nine of the twelve jurors, and thus was not a verdict at all.

Fritz, 872 A.2d at 852-53. The Superior Court, therefore, found that the verdict was the award of $51,300, which was agreed to by ten jurors, with jurors four and nine dissenting. However, because the ten-juror majority arrived at the $51,300 verdict through deliberations that included dissents from jurors four and eight on the issue of Appellant's contributory negligence, the Superior Court found that the verdict, *i.e.*, the finding for Appellant in the amount of $51,300, was actually the verdict of only nine jurors. We cannot accept this interpretation.

To understand why we respectfully disagree with the Superior Court's analysis, it is helpful to examine the difference between general verdicts and general verdicts with special findings, also known as general verdicts with special interrogatories. Generally, a verdict is the decision of a jury reported to the court on matters submitted to the jury at trial. Roth v. E. Connellsville Coke Co., 88 A. 781 (Pa. 1913). In Pennsylvania, verdicts may be

general, special, or general with special findings.[7] See Fulforth v. Prudential Ins. Co. of Amer., 24 A.2d 749 (Pa. 1942). A general verdict is a finding by the jury in terms of the issue or issues referred to them and is, either wholly or in part, for the plaintiff or for the defendant. Id. at 753; see also BLACK'S LAW DICTIONARY (8th ed. 2004) (defining general verdict as a verdict "by which the jury finds in favor of one party or the other"). Thus, when a trial judge requires only a general verdict slip, a jury will be call upon only to find "for plaintiff in the amount of . . . " " or "for defendant." No other substance will appear on the general verdict slip.

In contrast, when the trial court exercises its discretion to employ a general verdict with special findings, such as occurred in this case, the analytical subparts of the jury's process will be set forth in individual questions to be answered by the jury, and the answers thereto are always given in connection with the ultimate general verdict.[8] See Fulforth, 24 A.2d at 753; Schwab v. Continental-Equitable Title & Trust Co., 199 A. 150, 151 (Pa. 1938); Pa.R.C.P. No. 2257 ("Upon the court's own motion or the request of any party, the jury. . . shall return, in addition to a general verdict or finding, such specific findings as will determine the issues among all parties."). To the extent the answer is "no" to a particular

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[7] A special verdict, which is not implicated in this case, is one in which the jury finds all material facts in the case, leaving the ultimate decision of the case on those facts to the court. See Simpson v. Montgomery Ward & Co., 46 A.2d 674 (Pa. 1946); Fulforth, 24 A.2d at 753; BLACK'S LAW DICTIONARY (8th ed. 2004) (defining special verdict as "[a] verdict in which the jury makes findings only on factual issues submitted to them by the judge, who then decides the legal effect of the verdict"). A practice similar to a special verdict occurs when the trial judge submits special questions to the jury and then directs a verdict on the basis of their answers. See Schwab v. Continental-Equitable Title & Trust Co., 199 A. 150 (Pa. 1938).

[8] A party is not entitled to have special interrogatories submitted to the jury. See Willinger v. Mercy Catholic Med. Ctr. of S.E. Penna., Fitzgerald Mercy Div., 393 A.2d 1188, 1190 (Pa. 1978). Rather, the decision whether to submit special interrogatories to a jury is a ruling left to the discretion of the trial court. Id.

question, the general verdict slip with special findings becomes a *de facto* "verdict for defendant." Conversely, should the jury arrive at the last question, the slip's "bottom line" looks akin to the general verdict slip in that the amount of damages awarded to the plaintiff are specified.

As we explained in Brown v. Ambridge Yellow Cab Co., 97 A.2d 377 at 381 (Pa. 1953), when special findings are employed in connection with a general verdict, the jury's decision is the general verdict, not the answers to the individual interrogatories:

> Taking the answers [to the interrogatories] as a whole one cannot say that they represent a mathematical exactness and factual certainty of such impeccability as to overturn the deliberate and solemn conclusion reached in the general verdict. It would appear that the jury, after due deliberations, reached its conclusions and then perfunctorily and hurriedly attempted to answer the voluminous interrogatories. Logic does not require, and there is no law which compels acceptance of the special findings here, shot through as they are with inconsistencies, vagueness and inconclusiveness, as against the general verdict, which with authority and definitiveness declares: " we, the Jurors . . . find for the Plaintiff . . . in the amount of $8000.00. . . ."

In fact, in the usual case where special findings are consistent with the general verdict, the special findings are considered merely advisory. Greiner v. Commonwealth, 6 A.2d 67, 68 (Pa. 1939) (stating that, in a case affirming a verdict accompanied by special findings, "the special findings are of no consequence because, while advisory, they were not controlling; the important thing was the general verdict.").

Regardless of whether the jury is delivering a general verdict or general verdict with special findings, its deliberation will encompass all aspects of the case that are necessary to arrive at a decision. These aspects do not change depending on whether the jury is asked to discuss them orally before writing its general verdict or set forth the components of such discussion through answers to special interrogatories. See, *e.g.*, Panek v. Scranton Ry. Co., 102 A. 274 (Pa. 1917).

With a general verdict, as long as ten jurors agree with the finding and award as presented to the court, there can be no issue regarding whether the requisite five-sixths concurred. In this case, had the jury rendered a general verdict without special findings, it would have been for Appellant in the amount of $51,300. This would have been the result even though two jurors dissented on the issue of Appellant's contributory negligence. In fact, with a general verdict alone, it would not be known that two jurors had dissented on those issues because the litigants would not be entitled to inquire into the jury deliberation process.

However, the verdict in this case was not a general verdict, but a general verdict with special findings. If we were to accept Appellees' position, and that of the Superior Court majority, the fortuitous fact that this verdict included special findings would permit counsel to delve into the otherwise sacrosanct jury deliberation process to ascertain disagreements among particular jurors or particular subparts of their discussions, whereas this would not be permitted if the verdict had been a general verdict without interrogatories. We see no reason to permit invading the sanctity of the jury deliberations in the case of special findings where such invasion would not be permitted in the case of a general verdict without special findings. See, *e.g.*, Pratt v. St. Christopher's Hosp.,866 A.2d 313, 325 (Pa. 2005) ("it is axiomatic that inquiry into the motives of individual jurors and conduct during deliberations is never permissible. . . ."); Carter by Carter v. U.S. Steel Corp., 604 A.2d 1010,1013 (Pa. 1992) ("The rule in Pennsylvania, as well as in a majority of jurisdictions, is that a juror is incompetent to testify as to what occurred during deliberations").

The analytical thicket arising when a jury of lay people are confronted with the components and subcomponents of negligence, contributory negligence, comparative negligence, and potential other legal theories have caused trial courts of this Commonwealth to utilize general verdicts with special findings, such as here. See, *e.g.*, PENNSYLVANIA SUGGESTED STANDARD CIVIL JURY INSTRUCTION § 3.03A (providing for six

interrogatories in a case of comparative negligence and apportionment among joint tortfeasors). These questions permit a jury unlearned in the law to frame and structure their deliberations, if they so choose.

In the instant case, after discussions and deliberations, the jury presumably moved on to answer the special questions. When doing so, they discovered that ten agreed that Appellant's contributory negligence was not a substantial factor in bringing about the harm, and a different ten agreed that the result should be in favor of Appellant in the amount of $51,300. This bottom-line finding for Appellant is the verdict, Brown, 97 A.2d at 381; the only difference resulting between employ of a general verdict and the general verdict with special findings used here is that now we can ascertain that two jurors dissented on the issues of Appellant's contributory negligence and the amount of damages.

This result is not only permissible, but required by the plain language of the Pennsylvania Constitution art. 1, section 6 and 42 Pa.C.S. § 5104(b), which eliminated the requirement of juror unanimity. Practically speaking, if, as the Superior Court concluded, the two dissenting jurors on question four were not permitted to vote on subsequent questions, then every subsequent question must be decided unanimously by the remaining ten jurors if a verdict is to be reached. This, however, flouts the public's intent in amending the Constitution and the General Assembly's clearly expressed intention that civil cases are to be decided by five-sixths of a twelve-member jury, not unanimously by a jury of ten. 42 Pa.C.S. § 5104(b).

Additionally, this decision is wholly consistent with and, indeed, is compelled by our decision in Blum, 626 A.2d 537. In Blum, we remanded the case for a new trial where it had originally been tried before a jury of eleven rather than of twelve due to a juror's illness on the day of trial. Although the eleven-member jury was unanimous in its result, we emphasized the constitutional dimension of preserving a twelve-member jury in which each

member has the potential to voice a view that resists that of the majority and to sow sufficient doubt to prevent the formation of a five-sixths majority:

> While it is true that under subsection 5104(b) five-sixths of the jury shall be the verdict of the jury and shall have the same effect as a unanimous verdict of the jury, this in no way means that a verdict may be reached by a jury consisting of less than the constitutionally mandated twelve person jury where a demand for such is properly made. It is a logical assumption that if twelve jurors had deliberated in this matter, the five-sixths verdict might never have been reached. Moreover, an entirely different verdict may have been arrived at. Obviously, this would depend upon the leadership and persuasive abilities of the one juror who did not participate in the deliberations.

Id. at 546-47.

If we were to adopt the same-juror rule, as the Superior Court did, we would violate the spirit of Blum by effectively disenfranchising the dissenting voters, denying them the opportunity to participate meaningfully in the decision of the subsequent material questions. This rule would contradict Blum by depriving litigants of their right to have twelve jurors fully participate in the entire deliberative process. The right to have a jury of twelve decide one's case means that the jurors who have been empanelled are required to consider and decide each of the issues submitted to them by the court. The absence of any one voice from that process or the relegation of that voice to the margins by diminishing its influence invalidates the sanctity of the jury trial as defined by Blum. Once a juror has voted against, for example, a defendant's liability, the same-juror rule would have the effect of silencing that juror as to subsequent interrogatories pertaining to contributory negligence and damages. With respect to this case, under the same-juror rule, a juror who dissented on the issue of Appellant's contributory negligence would not have any voting power in determining the amount of damages, thus removing himself from further deliberations contrary to Blum.

The Superior Court acknowledged the disenfranchisement argument, but found it sufficient that jurors with dissenting views "may continue to express their disagreements throughout the deliberation process and seek to persuade others to their point of view."

Fritz, 872 A.2d at 853 n.3. We disagree. A dissenter stripped of his or her voting power does not have the same voice as a qualified, voting juror. As the Appellate Division of the New York Supreme Court aptly noted in Schabe:

> Under the [same-juror rule], the casting of a dissenting vote on any question reduces the dissenter's influence to a state of practical impotence and creates a mandate for continued unanimity among the other jurors on the remaining questions if the verdict is to survive. The dissenter is then bereft of real voting power, for his vote on the remaining questions can no longer affect the verdict

Schabe, 103 A.D.2d at 424.[9]

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[9] The dissent posits that the 1971 amendment to the language of Article 1, Section 6 did not alter the prior constitutional requirement that verdicts are to be rendered by a unanimous jury and that, therefore, our decision today results in a "sea change" never contemplated by the electorate in amending the constitution. This is simply not the case. Our decision today is consistent with and necessitated by our decision in Blum. There, we rejected the idea that the constitutional amendment changed the twelve member jury requirement. Instead, we noted that the only thing changed by the amendment was the requirement that the verdict be unanimous. We stated:

> The people of this Commonwealth, by constitutional amendment in 1971, altered the unanimity requirement by authorizing the General Assembly to provide by law that a verdict may be rendered by not less than five-sixths of the jury in any civil case. The General Assembly then promulgated the five-sixths verdict in subsection 5104(a) and (b) of the Judicial Code, 42 Pa.C.S. § 5104(a), (b). The unanimity feature, therefore, was changed.

Id. at 545-46.

As discussed herein, we believe a position, such as that advocated by the dissent, would specifically violate our holding in Blum requiring a twelve member jury because requiring five-sixths of the jury to vote unanimously on every component question posed to it would lead to requiring a unanimous verdict of ten.

While the dissent states that the idea of a "jury of ten" is illusory as it facially fails to account for two jurors in our twelve juror system, its argument essentially amounts to saying that the right to stand outside the polling place and engage in protest, no matter how meaningful, equates to the right to vote. If the dissent's view carried the day, two jurors would loose such right to vote. It is this disenfranchisement of jurors that would represent (continued…)

We find further support for the any-majority rule in our system of bifurcated trials. In a bifurcated trial, the jury decides one issue, typically liability, and then, if it finds for the plaintiff, the jury proceeds to hear evidence on and decide another issue, typically damages.[10] Under the rule we announce today, a juror who dissents during the liability phase is eligible and must participate in the damages phase. See Blum, 626 A.2d 537. If we were to adopt the same-juror rule applied by the Superior Court, however, then the dissenting jurors in the first phase of a bifurcated trial would be disenfranchised in the second phase because after dissenting, their subsequent vote would be meaningless, thus contradicting the requirement that civil cases are to be decided by five-sixths of a twelve-member jury. See id., 42 Pa.C.S. § 5104(b).

Finally, we note that other jurisdictions have found that requiring the same five-sixths jurors to agree on every issue would "result in time consuming writs, mistrials, frustrating delays and confusion for the trial judge and jury-all adding to the heavy burden of the civil trial process. See Juarez, 647 P.2d at 133; see also Gourley v. Nebr. Methodist Health Sys., Inc., 663 N.W.2d 43 at 59 (noting that the flexibility of the any-majority rule reduces the risk of hung juries, as well as all of the associated costs and delays); Schabe, 103 A.D.2d at 423 ("[T]he any [majority] principle reduces the number of mistrials and retrials while diminishing confusion for both court and jurors and does not interfere with the operation of the jury or sacrifice fairness."); Young v. J.B. Hunt Transp., 7801 S.W.2d 503,

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(…continued)
an unwise and unwarranted "sea change" from the law's development from Blum to our decision today.

[10] Although occasionally, as has become the practice for most asbestos cases, issues of medical causation and damages are bifurcated and tried before issues involving theories of liability and product identification, in the practice known as "reverse bifurcation." See, e.g., Crawford Lee Jones v. Johns-Manville Corp., et al., 22 Phila.Co.Rptr. 91, 93 (Pa.Com.Pl. 1991).

505 (Ky. 1989) (adopting the any majority rule and noting "[i]f we require agreement of the same nine persons on each of numerous disputed questions of fact, we invite a greater number of mistrial cases").[11]

The jury's verdict in this case was for Appellant in the amount of $51,300. When asked by the trial court if that was their verdict, ten out of twelve jurors agreed that it was. The fact that two jurors dissented on one of the preceding interrogatories, in effect disputing nothing more than the path the jury followed to reach the consensus, is irrelevant to the fact that ten jurors agreed on the final verdict. The order of the Superior Court is reversed.

Mr. Chief Justice Cappy, Mr. Justice Castille, Madame Justice Newman, Mr. Justice Eakin and Madame Justice Baldwin join the opinion.

Mr. Justice Saylor files a dissenting opinion.

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[11] We also note that the same-juror rule threatens the pervasive practice of guiding jury deliberations by providing special interrogatories. Under this rule, after each question, jurors would have to ask who among them was qualified to answer subsequent questions, a determination that might not always be straightforward. For example, in a case where the plaintiff had a product liability claim based on defective design and another claim based on failure to warn, the Court of Appeals of Ohio held that a juror who dissented on one theory was free to vote on the other, because the claims were "separate and unrelated" and were "two distinct causes of action." Gable v. Village of Gates Mills, 784 N.E.2d 739 (Ohio Ct. App. 2003), rev'd on other grounds, 816 N.E.2d 1049 (Ohio 2004).